Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 92-13
Tariff Filing Requirements For Interstate Common Carriers	)	

COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New York Telephone Company

and

New England Telephone and Telegraph Company

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SUMMARY

In this NPRM, The Commission has requested comment as to whether it has authority under the Communications Act to continue to permit nondominant carriers not to file tariffs. The Commission has also asked commenting parties, assuming the forbearance policy is unlawful, to address a number of additional issues, such as (1) whether all carriers must necessarily file tariffs; (2) whether carriers should be required to file any or all of their off-tariff service arrangements; (3) whether the streamlining rules established in the Competitive Carrier Order should be further relaxed; (4) what additional Commission rules would need to be changed if the forbearance policy were eliminated; and (5) what the implications would be for small IXCs, users and other affected entities, as well as for competition, if the Commission's forbearance policy were eliminated.

The NTCs demonstrate that the Commission's forbearance policy is inconsistent with the requirements of the Communications Act (the "Act"). Rather, the forbearance policy ignores the clear dictates of Section 203 of the Act, which requires that every common carrier "file...schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication..." The Commission, therefore, cannot abrogate the rate filing requirements of Section 203 of the Act for any common carrier

subject to the Commission's jurisdiction, whether that carrier is an IXC, LEC or competitive access provider ("CAP").

While the Act requires all carriers to file rates, the Commission is not required, however, to impose uniform filing requirements on all carriers, in all markets, or for all services. Rather, the Commission may "in its discretion and for good cause" establish different filing requirements, including different tariff review periods and different levels of tariff support, depending on the class of carrier and competitive nature of a particular market. The Competitive Carrier Order, in which the Commission recognized that identical levels of tariff support and uniform tariff review requirements may not be required of a carrier for all services, is thus consistent with Section 203 of the Act.

Finally, the NTCs demonstrate that the principles adopted by the Commission in the Competitive Carrier Order should be expanded to provide regulatory relief to LECs operating in competitive markets. Intense competition has developed in certain of the NTCs' geographic markets, and with respect to certain product and service offerings. Segments of the NTCs' marketplace in which IXCs participate, such as service in the New York - New Jersey corridor, have become highly competitive. Furthermore, the High Capacity Special Access market, in which CAPs such as Metropolitan Fiber Systems ("MFS") and Teleport Communications ("Teleport") offer services

which compete with the NTCs' high capacity offerings, has also been subject to intense competition. The Commission's failure to require these carriers to file tariffs clearly contravenes Section 203 of the Act. However, in markets that are competitive, the Commission can and should streamline the tariff filing requirements for both LECs and CAPs.

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New York Telephone Company ("NYT") and New England Telephone and Telegraph Company ("NET") (collectively, the "NYNEX Telephone Companies" or "NTCs") hereby file their comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released January 28, 1992 in the above-captioned proceeding.

I. INTRODUCTION

The Commission instituted this proceeding to "address the lawfulness and future application of its forbearance rules and policies."[1] Pursuant to those rules and policies, the Commission forbears from requiring nondominant interexchange carriers ("IXCs") to file interstate tariffs. As the Commission noted in the NPRM, today there are more than four hundred nondominant IXCs that offer common carrier services.

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1 NPRM, ¶ 2.

Few, if any, of these carriers file tariffs for all of their service offerings, and most do not file any tariffs at all.[2]

The Commission has requested comment as to whether it has authority under the Communications Act to continue to permit nondominant carriers not to file tariffs. The Commission has also asked commenting parties, assuming the forbearance policy is unlawful, to address a number of additional issues, such as (1) whether all carriers must necessarily file tariffs; (2) whether carriers should be required to file any or all of their off-tariff service arrangements; (3) whether the streamlining rules established in the Competitive Carrier Order[3] should be further relaxed; (4) what additional Commission rules would need to be changed if the forbearance policy were eliminated; and (5) what the implications would be for small IXCs, users and other affected entities, as well as for competition, if the Commission's forbearance policy were eliminated.

As the NTCs demonstrate below, the Commission's forbearance policy is inconsistent with the requirements of the Communications Act (the "Act"). Rather, the forbearance policy ignores the clear dictates of Section 203 of the Act, which requires that every common carrier "file...schedules showing all charges for itself and its connecting carriers for

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2 NPRM, ¶ 3.

3 In the Matter of Competition in the Interstate Interexchange Marketplace, 6 F.C.C. Rcd. 5880 (1991) ("Competitive Carrier Order").

interstate and foreign wire or radio communication..."[4] The Commission, therefore, cannot abrogate the rate filing requirements of Section 203 of the Act for any common carrier subject to the Commission's jurisdiction, whether that carrier is an IXC, LEC or competitive access provider ("CAP").

While the Act thus requires all carriers to file rates, the Commission is not required, however, to impose uniform filing requirements on all carriers, in all markets, or for all services. Rather, the Commission may "in its discretion and for good cause"[5] establish different filing requirements, including different tariff review periods and different levels of tariff support, depending on the class of carrier and competitive nature of a particular market. The Competitive Carrier Order, in which the Commission recognized that identical levels of tariff support and uniform tariff review requirements may not be required of a carrier for all services, is thus consistent with Section 203 of the Act.

The principles adopted by the Commission in the Competitive Carrier Order should be expanded to provide regulatory relief to LECs operating in competitive markets. Intense competition has developed in certain of the NTCs' geographic markets, and with respect to certain product and service offerings. For example, segments of the NTCs' marketplace in which IXCs participate, such as service in the New York - New Jersey corridor, have become highly

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4 47 U.S.C. §203(a).

5 See 47 U.S.C. §203(b)(2).

competitive. Furthermore, the High Capacity Special Access market, in which CAPs such as Metropolitan Fiber Systems ("MFS") and Teleport Communications ("Teleport") offer services which compete with the NTCs' high capacity offerings, has also been subject to intense competition. While firms such as Teleport and MFS may not be "dominant" carriers with respect to all services throughout the NYNEX region, they have gained substantial market share in certain geographic areas and with respect to certain types of services. The Commission's failure to require these carriers to file tariffs clearly contravenes Section 203 of the Act. Moreover, in markets that are competitive, the Commission can and should streamline the tariff filing requirements for LECs.

In sum, the Commission's forbearance policy is inconsistent with the requirements of Section 203 of the Communications Act. The Commission cannot exempt any common carrier from the minimum filing requirements imposed by the Communications Act. The Commission may, however, establish rules permitting varying levels of tariff support for common carrier services as well as varying tariff review periods, depending on the class of carrier and the competitive nature of the particular market. Finally, the principles adopted by the Commission in the Competitive Carrier Order which provided increased regulatory flexibility to AT&T for certain of its services should be expanded to provide comparable regulatory flexibility for the LECs for their services subject to competition.

II. THE COMMISSION'S FORBEARANCE POLICY IS UNLAWFUL

The Commission's forbearance policy arose out of a series of proceedings initiated in 1979 to consider amendment of the tariff filing requirements for competitive common carriers.[6] In the First Report and Order[7] in that proceeding, the Commission established, in essence, two classes of common carriers - dominant and nondominant. The Commission concluded that regulatory requirements for nondominant carriers could be reduced, since in the Commission's opinion this class of carrier lacked the ability to set prices contrary to the goals of the Act.

In the Second Report and Order adopted in 1982, the Commission introduced its forbearance policy, determining that it had authority under the Communications Act to "forbear applying particular Title II regulations in instances where such forbearance furthers statutory purposes and the public interest."[8] In 1983, in the Fourth Report and Order, the

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6 See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979).

7 85 FCC 2d 1 (1980). In the First Report and Order, AT&T, the independent telephone companies, domestic satellite carriers (domsats), domsat resellers, the miscellaneous common carriers and Western Union Telegraph Company were found to be dominant carriers. Only specialized common carriers and terrestrial resellers were classified as nondominant.

8 91 FCC 2d 59, 62 (1982). In that decision, it excused certain resellers from tariff filing requirements.

Commission dramatically extended its forbearance policy, applying it to all nondominant IXCs.[9]

Finally, in the Sixth Report and Order the Commission expanded its forbearance rules to preclude nondominant IXCs from filing tariffs.[10] This decision was reversed on appeal by the United States Court of Appeals for the District of Columbia Circuit, which ruled that the Commission did not have authority to prohibit nondominant IXCs from filing tariffs.[11]

The Commission cannot, consistent with the Communications Act, excuse any common carrier subject to its jurisdiction (except for connecting carriers)[12] from the rate filing requirements of Section 203 of the Act. Section 203 clearly requires that "every common carrier...shall...file with the Commission...schedules showing all charges for itself...and showing the classifications, practices and regulations affecting such charges."[13] The Court of Appeals has also observed that Section 203 requires "every common carrier"[14] to file rates, and that, absent a clearly expressed legislative

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9 95 FCC 2d 554 (1983).

10 99 FCC 2d 1020 (1985).

11 MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985). In invalidating the Commission's decision prohibiting common carriers from filing tariffs, the Court did not reach the issue of the lawfulness of the Commission's permissive forbearance policy.

12 Section 203 of the Act explicitly exempts connecting carriers from rate filing requirements.

13 47 U.S.C. §203(a).

14 765 F.2d at 1191 (emphasis in original).

intention to the contrary, courts regard such statutory language as conclusive.[15] The Court also observed that the Commission "has affirmative commands from Congress to ensure that rates are just, reasonable and nondiscriminatory, Sections 201, 202; that rates and practices are set forth in tariffs filed with the FCC, Section 203" and, finally, that the Commission "has no authority to ignore these commands, even if market forces arguably are present which undercut the 'natural monopoly' justification for regulation."[16]

Furthermore, the Supreme Court's decision in Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990) removes all doubt concerning the legality of the Commission's forbearance policy. In Maislin, the Court construed the tariff filing provisions of the Interstate Commerce Act,[17] which are identical to those of Section 203 of the Communications Act, and which provided the model for

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15 Id.

16 Id. at 1193 (emphasis in original). The Court also noted that the Commission's forbearance policy represented a rapid and dramatic shift from prior Commission policy. It cited the Commission's statements in Western Union Telegraph Co., 75 F.C.C. 2d 461, 474 (1980), which was decided less than two years prior to the Second Report and Order. "There can be no question that tariffs are essential to the entire administrative scheme of the Act. They serve as a kind of 'tripwire' enabling the Commission to monitor carriers subject to its jurisdiction...The importance of tariffs and the requirement that all common carriers - all common carriers - offer all their communications services to the public through published tariffs is well established (citations omitted)."

17 49 U.S.C. §10761 and §10762.

Section 203 of the Act.[18] The Court held that these filing provisions precluded the ICC from applying its negotiated rates policy, adopted in a 1986 rulemaking, to excuse a carrier from collecting, or a shipper from paying, the filed rates.[19] The Court stated that:

> Compliance with §§10761 and 10762 is 'utterly central' to the administration of the Act...Although the ICC argues that the Negotiated Rates policy does not 'abolis[h] the requirement of Section 10761 that carriers must continue to charge the tariff rate'...the policy, by sanctioning adherence to unfiled rates, undermines the basic structure of the Act.[20]

The Court discussed several of the principal reasons for the rate filing requirement:

> The ICC cannot review in advance the reasonableness of unfiled rates. Likewise, other shippers cannot know if they should challenge a carrier's rates as discriminatory when many of the carrier's rates are privately negotiated and never disclosed to the ICC.[21]

Like the Commission, which adopted the forbearance rules with the stated purpose of promoting competition by easing certain regulatory requirements, the ICC defended its negotiated rates policy by arguing that, in light of a more

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18 See, e.g., S. Rep. No. 781, 73d Cong. 2d Sess. at 4 (1934); H.R. Rep. No. 1850, 73d Cong. 2d Sess. at 5 (1934).

19 110 S. Ct. at 2763-65.

20 110 S. Ct. at 2769.

21 Id. (emphasis in original).

competitive environment, strict adherence to the filed rate doctrine was unnecessary.[22] The Supreme Court rejected this argument as well.

> Although the Commission has both the authority and expertise generally to adopt new policies when faced with new developments in the industry (citations omitted), it does not have the power to adopt a policy that directly conflicts with its governing statute...generalized congressional exhortations to 'increase competition' cannot provide the ICC authority to alter the well-established statutory filed rate requirements.[23]

In sum, the Commission cannot ignore the clear requirements of Section 203 that all common carriers file their rates, including their rates for any "off-tariff" service arrangements. The current forbearance policy violates these requirements, and the Commission does not have the authority under the Communications Act to exempt any common carrier subject to its jurisdiction, whether that carrier is an IXC, LEC or CAP, from the rate filing requirements of Section 203 of the Act.

III. THE COMMUNICATIONS ACT PERMITS REGULATORY FLEXIBILITY

While the Commission's forbearance policy is in conflict with Section 203 of the Act, the Act does not require the Commission to adopt rules requiring all common carriers to file tariffs with identical support, and with identical review

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22 Id. at 2770.

23 Id.

periods for all of their services. Rather, the Commission may establish different filing requirements depending on the class of carrier and the competitive nature of a particular market.

Pursuant to Section 203 of the Act, all common carriers are, at a minimum, required to file their rates. Moreover, the Commission may, consistent with the Act, require dominant carriers to file more extensive tariff support than non-dominant carriers. Finally, however, the Commission may also relax tariff filing requirements for dominant carriers in competitive markets and for competitive services offered by those carriers.

The Act provides the Commission with authority to require, by regulation, varying amounts of information in addition to the rates charged by the carrier.

> Such schedules [containing rates] shall contain such other information...as the Commission may by regulation require...[24]

The Commission also has the authority to change those requirements as conditions warrant.

> The Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions...[25]

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24 47 U.S.C. §203(a).

25 47 U.S.C. §203(b)(2).

While the Commission may not eliminate the statutory requirement that all common carriers file rates, the Commission may, and should, adopt rules providing for streamlined regulation of dominant carriers in competitive markets and with respect to competitive services.

For example, in its recent Competitive Carrier Order, the Commission observed that "the growth of competition in the business services segment of the long-distance marketplace warrants regulatory changes."[26] In response to the growth of competition in that segment of the long-distance market, the Commission streamlined its tariff regulation of certain of AT&T's business services, and authorized IXCs to offer certain services pursuant to individually negotiated contracts. Specifically, the Commission adopted rules permitting AT&T to file business service tariffs on fourteen days notice, and also determined that, in light of the competitiveness of these services, tariffs would be presumed lawful for purposes of advance tariff review. As such, AT&T was excused from filing cost support with these tariffs, and Price Cap ceilings, bands and rate floors would no longer apply.[27]

The Competitive Carrier Order also introduced regulatory reforms in another area. The Commission noted the increased tendency of large business customers to use competitive bids to meet their telecommunications needs, and the signifcant number of off-tariff offerings being made by

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26 Competitive Carrier Order, ¶ 8.

27 Id., ¶ 74.

AT&T's competitors.[28] The Commission therefore adopted the "contract rates" proposal, which permits IXCs, including AT&T, to offer services pursuant to individually negotiated contracts. The Commission, however required AT&T to file, fourteen days prior to the effective date of any such contracts, a tariff setting out the basic terms and conditions of the contract,[29] and also required AT&T to make all such contracts generally available to "similarly situated customers under substantially similar circumstances."[30]

The regulatory streamlining principles adopted by the Commission in the Competitive Carrier Order are permissible under the Communications Act. As noted above, the Commission may, consistent with Section 203(b) of the Act, adopt rules permitting varying levels of tariff support or shortened tariff review periods for certain services "for good cause

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28 Id., ¶ 90.

29 AT&T is required to file tariffs containing the following information: (1) the term of the contract, including any renewal options; (2) a brief description of each of the services provided under the contract; (3) minimum volume commitments for each service; (4) the contract price for each service or services at the volume levels committed to by the customers; (5) a general description of any volume discounts built into the contract rate structure; and (6) a general description of other classifications, practices and regulations affecting the contract rate.

30 Id., ¶ 91.

31 See also, e.g. Southern Motor Carriers Rate Conference v. U.S., 773 F.2d 1561 (11th Cir. 1985). In its decision, the court, construing an identical provision of the Interstate Commerce Act, affirmed the authority of the ICC to reduce the 30 day notice period for filing rates required by 49 U.S.C. §10762(c)(3) to one day for rate reductions, and seven days for rate increases.

shown."[31] Furthermore, the Commission may consider competitive conditions in exercising its discretion under the statute. The Interstate Commerce Commission has specifically found that competition constitutes "special circumstances" justifying a reduction in notice periods.[32] Similarly, the contract carriage proposal adopted by the Commission is authorized by the Act, as the Court of Appeals has held that the Communications Act permits the filing of contract-based tariffs.[33]

The regulatory streamlining adopted in the Competitive Carrier Order, however, should not be limited to AT&T. Segments of the local exchange carrier marketplace in which AT&T, other IXCs and the CAPs compete with the LECs have become highly competitive. The NTCs and other LECs must be permitted to compete with these other carriers on an even footing. This competition can only occur if 1) all common carriers, including the CAPs, are required to meet the minimum filing requirements of Section 203 of the Act; and 2) streamlining for AT&T for competitive services is accompanied by commensurate regulatory streamlining for the LECs.

IV. REGULATORY REFORM IS NECESSARY TO ENSURE COMPETITION IN THE LOCAL EXCHANGE MARKETPLACE

As the Commission has recognized, competition has grown dramatically in the large business market. Large

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32 See Southern Motor Carriers Rate Conference, at 1570.

33 MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 37-38 (D.C. Cir. 1990).

businesses are constantly seeking more innovative and economical solutions to their telecommunications needs. As a result, there has been a proliferation of customized and competitively priced service offerings such as those provided under AT&T's Tariffs 9, 12 and 15. In providing flexible and customized services, IXCs have often built their own facilities, or turned to CAPs such as MFS or Teleport. CAPs also offer services which compete with the NTCs' high capacity offerings. Under the Commission's forbearance policy, CAPs are not required to file tariffs, nor are they even required to file their rates for services they offer in competition with the NTCs.

CAPs are common carriers, and as such should be subject to the rate filing requirements of Section 203. Teleport, for example, has described itself as "a non-dominant common carrier for interstate and intrastate local telecommunications services" operating under the Commission's Title II Rules.[34] The Commission has also observed that:

> Teleport Communications (TelCom) is a common carrier providing both interstate and intrastate service over a fiber optic network in the New York City Metropolitan region.[35]

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34 In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Comments of Teleport Communications Group, p. 1.

35 Public Notice, "Teleport Communications Petition for Declaratory Ruling Affirming its Right to Have its Fiber Optic Network Interconnected by New York Telephone", 2 FCC Rcd. 2169 (1987).

Similarly, MFS provides common carrier services.[36]

The emergence of competition in the local exchange market, particularly in the large business market segment, has been well documented in the FCC's Expanded Interconnection, Local Transport Rate Restructure and Open Network Architecture proceedings, as well as in a number of state regulatory proceedings. Furthermore, the growth in the number of CAPs serving those large businesses and the area served by them is ever expanding. According to a recent analysis by Dr. Joseph S. Kraemer:

> The number of ALTs is increasing. From less than five in 1986, the industry had grown to approximately 30 separately managed ALT providers by early 1991...ALTs have expanded the number of cities in which they operate from fewer than five in 1986 to almost 60 expected by the end of 1991.[37]

The Kraemer report also predicts a significant impact on the LECs as a result of the growth of competition:

> In fact, if an LEC allows entry and does not compete in terms of price, service, and technology, an ALT can be expected to achieve a 40 to 50 percent share of the DS-1 and DS-3 markets in the ALT's geographical service area.[38]

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36 As noted in MFS' Comments in CC Docket 91-141, MFS subsidiaries are certified to provide competitive private line services, or are registered as nondominant carriers in at least eleven states. (Comments of Metropolitan Fiber Systems, dated August 6, 1991, p. 10, fn. 9.)

37 See "Competitive Assessment of the Market for Alternative Local Transport" by Dr. S. Kraemer, Deloitte & Touche Telecommunications Industry Program, 1991 Monograph Series, at page 2.

38 Id. at p. 5.

The general principle established in the Competitive Carrier Order, that regulation of dominant carriers should be relaxed as competition increases, should be applied to LECs. All access services offered by a LEC should be classified according to the competitive nature of the market in which they are offered. As a LEC demonstrates that a service is in a competitive market, the degree of regulation on the LEC with respect to that service should be relaxed accordingly.

Competition has already grown dramatically in several of the NTCs' markets. For example, one market in which competition has been intense is the New York/New Jersey Corridor.[39] The New York/New Jersey Corridor encompasses the five boroughs of New York City and the five northern counties in New Jersey (Bergen, Essex, Hudson, Passaic and Union). As shown in Attachment A, NYT's total originating messages have declined from approximately 5.1 million in January 1986 to 309,000 in December 1991. The amount of the decline in NYT's share in this market, which is substantial, can be estimated by assuming total Corridor traffic grew by a rate similar to NYT's total Switched Access growth rate. Attachment A plots this total market estimate against NYT's originating messages in the Corridor, and shows that NYT's total originating minutes have declined by approximately 94% since January 1986, while NYT's estimated share of the Corridor market has declined to less than 5%.

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39 The Modification of Final Judgment permits NYT to provide interstate, interLATA service in New York/New Jersey Corridor.

NYT's Corridor service is currently included in the interexchange services basket and is subject to full Price Cap regulation. However, given the competition experienced by NYT in the New York/New Jersey Corridor, the NTCs should be afforded the same regulatory relief in that market as was granted to AT&T for competitive business services.

Another example of a market in which competition is intense is the High Capacity Special Access market. For example, New York Telephone recently commissioned a study to determine the market shares in the large business market in Manhattan for premise-to-POP DS1 services among NYT and the various CAPs.[40] The study revealed that NYT's share of this market segment for this customer group was approximately 64%, while Teleport alone had achieved a 26% share. Competition in other High Capacity Special Access submarkets, such as the POP-to-POP market segment, is even more intense.

Market share data, however, is not the only criterion for determining market power. Rather, in the Competitive Carrier Order, the Commission considered, in addition to market share data, the strength of AT&T's competitors and their ability to add new customers to their networks on a going-forward basis in assessing AT&T's market power. Like AT&T's competitors, the NTCs' competitors are robust, well funded, rapidly growing firms. For example, a substantial interest in Teleport has recently been purchased by

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40 The universe for the research was NYT's 200 largest customers.

Tele-Communications, Inc., the world's largest cable television enterprise while the remainder is held by Cox Communications, another large cable enterprise.[41] Other alternate access vendors, such as Locate and MFS, are also growing at a rapid rate.[42]

Thus, certain market segments are already subject to varying degrees and types of competition, and in some markets that competition is intense. These differences in the degree of competition create the need for a more flexible regulatory architecture. More competitive markets should operate with fewer regulatory restrictions than those in which the incumbent faces less competition. To achieve this flexibility, a process must be developed which adjusts the degree of regulation to match the degree of competition in a market.

One possible blueprint for increased regulatory flexibility is contained in a paper recently authored by the United States Telephone Association ("USTA Disussion Paper"). The USTA Discussion Paper suggests that, for regulatory purposes, markets be categorized as less competitive, more competitive or very competitive. The competitive nature of a market would be determined based on factors such as barriers to

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41 Furthermore, Teleport has been expanding its serving capability rapidly. According to its 1990 Sales Brochure, Teleport's fiber backbone reached 532 key office buildings in 1990, as opposed to 270 buildings in 1989, 170 buildings in 1988 and 54 buildings in 1985.

42 For example, the City of New York has granted MFS a fifteen year franchise for a fiber network in the financial district of lower Manhattan.

entry, demand and supply elasticities, the number of suppliers in the market and the number and type of buyers in the market.

Varying tariff filing and review guidelines would apply to LECs depending on the competitive nature of the market. For example, in less competitive markets, tariff filing intervals would remain unchanged, Price Cap requirements would be similar to those in effect today, rates would be averaged at the study area level, new services would be subject to the current net revenue test[43] and contract services would be limited to special construction. At the other end of the competitive spectrum, however, regulation would be relaxed significantly. In very competitive markets, contract carriage would be permitted, rates for very competitive services would be outside the Price Cap plan and contracts or tariffs would be filed on an informational basis.

With the elimination of forbearance, all carriers will be subject to the minimum filing requirements of Section 203 of the Act. The USTA Discussion Paper presents useful ideas for further regulatory reform. In markets where competition is

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43 As the NTCs have noted, there are problems with the net revenue test. For example, since part of the net revenue test is a consideration of the cross-elastic effects of a new service, while a determination of fully distributed costs focuses solely on the particular service in question, pricing of a new service at fully distributed cost may in some instances result in failure to satisfy the net revenue test. See Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture and Policy and Rules Concerning Rates for Dominant Carriers, (CC Docket Nos. 89-79 and 87-313), Petition for Clarification and Reconsideration of the NYNEX Telephone Companies, August 26, 1991.

minimal, the Commission's rules for dominant carriers would remain essentially unchanged. In competitive markets, however, those rules would be relaxed to permit the LECs increased regulatory flexibility.

V. CONCLUSION

The Commission's forbearance policy is inconsistent with the requirements of the Communications Act. The Commission cannot abrogate the rate filing requirements of Section 203 of the Act for any common carrier subject to the Commission's jurisdiction. The Commission need not, however, require uniform filing requirements of all carriers, in all markets or for all services but instead may impose varying requirements depending on the class of carrier or competitive nature of a particular market. Moreover, for LEC services subject to significant competition, streamlined regulation is appropriate. With the elimination of forbearance, the time is